IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 368 of 1985
With
CROSS OBJECTIONS No. 8002 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SHARDABEN WD/O THAKOR AMRUTJI DHUJALJI & 4 - Appellant(s)
Versus
THAKOR LAXMANJI NAGRJI & 3 - Defendant(s)

==========

Appearance :
MR KEYUR VYAS for MR PRAKASH K JANI for Appellant(s) : 1 - 5.
UNSERVED-EXPIRED (N) for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2 - 3.
MR JD AJMERA for Defendant(s) : 4,

==========

CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 13/11/2006

ORAL JUDGMENT

1. The original claimants have approached this Court by filing this appeal under Section 110D of the Motor Vehicles Act, 1939 (hereinafter referred to as “the Act”) for enhancement of the compensation awarded by the Motor Accident Claims Tribunal, Sabarkantha at Himmatnagar dated 20/08/1982. By the said judgment and award, the Tribunal has granted compensation to the appellants of Rs.21,000/- together with running interest at the rate of 6% per annum and the proportionate costs. The claim was filed because one Thaker Amrutji Dhulaji who died in a vehicular accident, happened to be the husband of original claimant No.1 and son of claimant Nos.2 and 3 and father of claimant Nos.4 and 5, who were minor at that time. On the fateful day, he was travelling in a truck bearing registration No.GTK 4836. It was owned by respondent Nos.2 and 3 at the relevant point of time and it was insured with respondent No.4. It is the say of the appellants that on the relevant day, respondent No.1 was driving the vehicle. He drove the vehicle in a rash and negligent manner and as a result of the same, the vehicle turned turtle and the deceased received serious injuries and

ultimately died. In view of the same, the claim of compensation of sum of Rs.1,00,000/- was filed.

2. The claim was resisted by the respondents. Respondent No.4 is the insurance Company, whereas respondent Nos.2 and 3 are the owners of the offending vehicle. Respondent No.1 has been joined on the allegation that he was driving the vehicle at the relevant time. It is the say of the respondents that the deceased himself was driving the vehicle and the accident took place on account of his own negligence. Therefore, his heirs were not entitled to receive any compensation. So far insurance Company is concerned, it also raised contention that the contract of insurance was entered into between respondent No.4 and respondent No.2 and there was no previty of contract between the insurance Company and respondent No.3. According to it, it is an admitted position that the truck was with respondent No.3 and the deceased was his employee. It is the say of insurance Company that respondent No.2 was the registered owner, but he subsequently sold the vehicle to respondent No.3 and no insurance coverage

was taken by respondent No.3.

3. At the hearing of the case, the parties produced their respective evidence to substantiate their cases. On the basis of the material produced before it, the Tribunal came to conclusion that there was negligence on the part of respondent No.1, while driving the vehicle. It also came to conclusion that it was respondent No.1 who was driving the vehicle and not the deceased, as per the say of respondent No.3.

4. The Tribunal on the basis of the material produced before it held that there was no negligence of respondent No.1. Secondly, the appellants were entitled to receive compensation as provided under the Workmen's Compensation Act, since the deceased was travelling in the capacity of an employee of respondent No.3 in the offending vehicle. In other words, as an employee of respondent No.3, his liability was only to the extent as provided under the Workmen Compensation Act. The Tribunal on the facts and circumstances also came to conclusion that

insurance Company-respondent No.4 was not liable, since the contract of insurance was between respondent No.4 and respondent No.2 and that there was no previty of contract between it and respondent No.3.

5. I have heard Mr. Keyur Vyas, learned advocate appearing for Mr.P.K.Jani for the appellants and Mr.J.D.Ajmera, learned advocate for respondent No.4-insurance Company. Other respondents are served, but nobody has remained present.

6. So far the aspect of negligence is concerned, the Tribunal has come to conclusion that the deceased was the driver of the vehicle and he drove the vehicle at the relevant time, and therefore, his heirs were not entitled to file any claim petition. It has also come to the conclusion that he was travelling in the said vehicle as an employee of respondent No.3. The finding given by the Tribunal has not been challenged by the other side. In view of the same, there is no need for me to interfere with the said finding and I accept the

conclusion drawn by the Tribunal that the deceased was an employee of respondent No.3 and in that capacity, during the course of his employment, he was driving the offending vehicle at the time of accident.

7. The second aspect is with regard to contract. The Tribunal has awarded a sum of Rs.21,000/- holding that the liability was to the extent as provided under the Workmen's Compensation Act, and therefore, held that Schedule-4 of the Act provided for Rs.21,000/- to be paid by way of compensation for the death of an employee. It is submitted by the learned advocate for the appellant that under Section 110AA, the appellants had option to exercise and they have preferred claim under the provisions of the Act and not under Workmen's Compensation Act, therefore, the Tribunal ought not to have made the award under the Workmen's Compensation Act. In such circumstances, the Tribunal ought to have made award under the Act keeping in view the various heads under which the compensation could be awarded. Such submission

cannot be accepted. Though the option has been given to choose the forum, the liability remains only to the extent under Workmen's Compensation Act as provided under Section 95 Sub-Section (1) of the Act. In a decision of the Apex Court in the case of National Insurance Co. Ltd. V/s. Prembhai Patel and others (2005)6 Supreme Court Cases 172, it is held that when there is policy whereby insurance Company has granted larger coverage, the compensation should not be limited to the limit provided under the Workmen's Compensation Act. However, when such contract is absent, the liability would be only to the extent of the liability arising under the Workmen's Compensation Act and not beyond that. Here, in the instant case, there is no material to show that larger coverage was taken by paying additional premium. In view of the same, the finding of the Tribunal appears to be just and proper and it is not required to be disturbed.

8. So far the fixation of liability is concerned, the Tribunal has held that insurance Company cannot be held liable because there is no

contract of insurance between respondent No.3 and insurance Company. It is on record and it is almost an admitted position that the deceased was travelling in the offending vehicle as an employee of respondent No.3. It is the say of the appellants that respondent No.3 was the owner of the vehicle. However, the record of original transport authority showed that the registered owner was respondent No.2 and the contract of insurance Company was between the insurance Company and respondent No.2. However, considering the fact that the insured vehicle was transferred to respondent No.3 by respondent No.2. In my opinion, it cannot be said that there was contract of insurance between respondent No.3 and the insurance Company. When there is no valid contract of insurance existing between respondent No.3 and the insurance Company, there is no question of any liability. I have perused the cross objections filed by respondent No.3. However, I do not find any substance in the contentions raised in the memorandum thereof. In that view of the matter, there is no need to disturb any of the findings given by the Tribunal. This appeal, has therefore, no merits and

it is dismissed. Cross objections are also dismissed with no order as to costs.

(AKSHAY H. MEHTA,J.)

mrpandya*